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DOCKET NO. 1596

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

**BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.
FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL,
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL**

TRANSFER ORDER

Before the Panel are motions brought, respectively, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 39 Northern District of Indiana actions, six Middle District of Alabama actions, one Southern District of Alabama action, one District of New Jersey action, and one Southern District of West Virginia action as listed on Schedule A. These plaintiffs ask the Panel to vacate its orders conditionally transferring the actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Similarly, two defendants – a doctor and a health care organization – in the Eastern District of Wisconsin action move to vacate the conditional transfer order with respect to that action. Common defendant Eli Lilly and Co. opposes the motions to vacate and urges inclusion of the 49 actions in the MDL-1596 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that these 49 actions involve common questions of fact with the actions in this litigation previously transferred to the Eastern District of New York, and that transfer of these actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Eastern District of New York was a proper Section 1407 forum for actions involving claims of liability related to the prescription drug Zyprexa. *See In re Zyprexa Products Liability Litigation*, 314 F.Supp.2d 1380 (J.P.M.L. 2004). Any motions for remand to state court or for dismissal can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiff in the Southern District of West Virginia action argues against transfer, among other things, that the action, which pleads statutory claims under West Virginia law on behalf of the state, does not share sufficient questions of fact with the products liability claims in the previously centralized MDL-1596 actions, which arise from product defect and failure to warn, to warrant transfer. We are unpersuaded by this argument. Regardless of the differences in legal theory, the claims in the Southern District of West Virginia action similarly arise from representations about the safety of Zyprexa and its

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adverse effects, in particular, the incidence of diabetes and related diseases in users. Inclusion of these claims in the MDL-1596 proceedings has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; and 2) allows pretrial proceedings with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues. *See, e.g., In re Ephedra Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Jack B. Weinstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that the request for fees and expenses by certain plaintiffs is denied.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1596 -- In re Zyprexa Products Liability LitigationMiddle District of Alabama

~~Mattie Grant v. Eli Lilly & Co., et al., C.A. No. 2:06-464 06cv 5749 (JBW) (RLM)~~
~~Marie Person v. Eli Lilly & Co., et al., C.A. No. 2:06-465 06cv 5750 (JBW) (RLM)~~
~~Nicole Glover v. Eli Lilly & Co., et al., C.A. No. 2:06-466 06cv 5754 (JBW) (RLM)~~
~~Robert Frizzle v. Eli Lilly & Co., et al., C.A. No. 2:06-467 06cv 5755 (JBW) (RLM)~~
~~Leslie Gantt v. Eli Lilly & Co., et al., C.A. No. 2:06-468 06cv 5757 (JBW) (RLM)~~
~~Dorothy Wakefield v. Eli Lilly & Co., et al., C.A. No. 3:06-460 06cv 5758 (JBW) (RLM)~~

Southern District of Alabama

~~Kelly P. Foster v. Eli Lilly & Co., et al., C.A. No. 1:06-261 06cv 5767 (JBW) (RLM)~~

Northern District of Indiana

~~Edwin Perkins, Jr., et al. v. Eli Lilly & Co., C.A. No. 4:06-460 06cv 5768 (JBW) (RLM)~~
~~Fredrick Thomas, et al. v. Eli Lilly & Co., C.A. No. 4:06-48 06cv 5769 (JBW) (RLM)~~
~~Ozella Tabourne, et al. v. Eli Lilly & Co., C.A. No. 4:06-49 06cv 5770 (JBW) (RLM)~~
~~Lisa Alex, et al. v. Eli Lilly & Co., C.A. No. 4:06-50 06cv 5771 (JBW) (RLM)~~
~~Maria Parson, et al. v. Eli Lilly & Co., C.A. No. 4:06-51 06cv 5772 (JBW) (RLM)~~
~~Angela Williams, et al. v. Eli Lilly & Co., C.A. No. 4:06-54 06cv 5773 (JBW) (RLM)~~
~~Victor Johnson, et al. v. Eli Lilly & Co., C.A. No. 4:06-55 06cv 5774 (JBW) (RLM)~~
~~Jack Lidikay, et al. v. Eli Lilly & Co., C.A. No. 4:06-56 06cv 5775 (JBW) (RLM)~~
~~Donette Mace, et al. v. Eli Lilly & Co., C.A. No. 4:06-57 06cv 5778~~
~~John Murnane, et al. v. Eli Lilly & Co., C.A. No. 4:06-58 06cv 5779~~
~~Marie Haney, et al. v. Eli Lilly & Co., C.A. No. 4:06-59 06cv 5780~~
~~Bradford Heck, et al. v. Eli Lilly & Co., C.A. No. 4:06-60 06cv 5781~~
~~Charmane Horton, et al. v. Eli Lilly & Co., C.A. No. 4:06-61 06cv 5782~~
~~Wesley Howard, et al. v. Eli Lilly & Co., C.A. No. 4:06-62 06cv 5783~~
~~Bobby Brown, et al. v. Eli Lilly & Co., C.A. No. 4:06-63 06cv 5786 (JBW)~~
~~Charles Chanton, et al. v. Eli Lilly & Co., C.A. No. 4:06-64 06cv 5787~~
~~Nancy Carpenter, et al. v. Eli Lilly & Co., C.A. No. 4:06-65 06cv 5788 06cv 5788~~
~~Maxine Fernandez, et al. v. Eli Lilly & Co., C.A. No. 4:06-66 06cv 5789~~
~~Luella Cramer, et al. v. Eli Lilly & Co., C.A. No. 4:06-67 06cv 5790~~
~~Gordon Smith, et al. v. Eli Lilly & Co., C.A. No. 4:06-68 06cv 5791~~
~~Ray Garrison, et al. v. Eli Lilly & Co., C.A. No. 4:06-69 06cv 5792.~~
~~Willie Braey, et al. v. Eli Lilly & Co., C.A. No. 4:06-70 06cv 5796~~
~~Zanara R. Ross, et al. v. Eli Lilly & Co., C.A. No. 4:06-71 06cv 5798~~
~~Roger Tompkins, et al. v. Eli Lilly & Co., C.A. No. 4:06-75 06cv 5799~~

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Northern District of Indiana (Continued)

~~Wayne Trembly, et al. v. Eli Lilly & Co., C.A. No. 4:06-76~~ 06CV5802 (JBW) (RLM)
~~Angela Albert, et al. v. Eli Lilly & Co., C.A. No. 4:06-77~~ 06CV5803 (JBW) (RLM)
~~Richard Pagani, et al. v. Eli Lilly & Co., C.A. No. 4:06-78~~ 06CV5804 (JBW) (RLM)
~~Leslie Carter, et al. v. Eli Lilly & Co., C.A. No. 4:06-79~~ 06CV5807 (JBW) (RLM)
~~Casey Cade, et al. v. Eli Lilly & Co., C.A. No. 4:06-80~~ 06CV5808 (JBW) (RLM)
~~Denise Eggleston, et al. v. Eli Lilly & Co., C.A. No. 4:06-81~~ 06CV5809 (JBW) (RLM)
~~Kathleen Cleary, et al. v. Eli Lilly & Co., C.A. No. 4:06-82~~ 06CV5810 (JBW) (RLM)
~~David Aguilera, et al. v. Eli Lilly & Co., C.A. No. 4:06-83~~ 06CV5811 (JBW) (RLM)
~~Roseaner Gresham, et al. v. Eli Lilly & Co., C.A. No. 4:06-84~~ 06CV5812 (JBW) (RLM)
~~Roger Young, et al. v. Eli Lilly & Co., C.A. No. 4:06-85~~ 06CV5813 (JBW) (RLM)
~~Patsy Wright, et al. v. Woods, et al., C.A. No. 4:06-86~~ 06CV5815 (JBW) (RLM)
~~Ronald Brassfield, et al. v. Eli Lilly & Co., C.A. No. 4:06-87~~ 06CV5816 (JBW) (RLM)
~~Michael Capshaw, et al. v. Eli Lilly & Co., C.A. No. 4:06-88~~ 06CV5817 (JBW) (RLM)
~~Amy Goode, et al. v. Eli Lilly & Co., C.A. No. 4:06-90~~ 06CV5818 (JBW) (RLM)
~~Lois Anne Shaffer, et al. v. Eli Lilly & Co., C.A. No. 4:06-91~~ 06CV5819 (JBW) (RLM)

District of New Jersey

Kevin A. Holbert, et al. v. Eli Lilly & Co., et al., C.A. No. 3:06-1742

Southern District of West Virginia

State of West Virginia, ex rel v. Eli Lilly & Co., C.A. No. 3:06-298

Eastern District of Wisconsin

Frances Lee Young v. Eli Lilly & Co., et al., C.A. No. 2:06-645